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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FERNANDO HARO, III,

Plaintiff,

v.

THOMAS KELLER RESTAURANT

GROUP, et al.,

Defendant(s).

Case No.: 2:20-cv-02113-APG-DJA

ORDER

Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. (ECF No. 1). Plaintiff also submitted a complaint. (ECF No. 1-1).

I. In Forma Pauperis Application

Plaintiff filed the affidavit required by § 1915(a). (ECF No. 1). Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

1 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
2 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
3 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
4 F.3d 1103, 1106 (9th Cir. 1995).

5 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
6 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
7 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
8 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
9 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
10 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it
11 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
12 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
13 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
14 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
15 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
16 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
17 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
18 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
19 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
20 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

21 Federal courts are courts of limited jurisdiction and possess only that power authorized by
22 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28 U.S.C.
23 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
24 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
25 federal law creates the cause of action or where the vindication of a right under state law
26 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
27 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
28 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a federal

question is presented on the face of the plaintiff's properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

In this case, Plaintiff attempts to bring a claim under Title VII of the Civil Rights Act of 1964 and Nevada law tort claims. *See* Compl. (ECF No. 1-1). A claim brought under Title VII invokes the Court’s federal jurisdiction while the state law claims would fall under supplemental jurisdiction.

Having determined that federal-question jurisdiction exists under the well-pleaded complaint rule, the Court now turns to the sufficiency of the factual allegations to state a claim. Plaintiff filed this action within 95 days of the EEOC right to sue notice and thus, the Court will find it to be timely. Plaintiff alleges that he was employed by Defendants back in 2014-2016, filed a prior EEOC charge along with workers compensation claims, and was retaliated against by being terminated. The Court finds that the factual allegations are sufficient at this point to survive screening on his retaliation, defamation, intentional interference with prospective economic advantage, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent hiring, retention, or supervision claims.

III. Conclusion

Accordingly, **IT IS ORDERED** that:

1. Plaintiff’s request to proceed *in forma pauperis* (ECF No. 1) is **GRANTED**. Plaintiff shall not be required to pre-pay the filing fee of four hundred two dollars (\$400.00). Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of a security therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at government expense.
2. The Clerk’s Office is **INSTRUCTED** to file Plaintiff’s complaint (ECF No. 1-1) on the docket.
3. The Clerk of the Court shall issue Summons to Defendants and deliver the same to the U.S. Marshal for service. The Clerk of the Court shall also deliver a copy of the complaint (ECF No. 1-1) to the U.S. Marshal for service.

- 1 4. Plaintiff shall have thirty days in which to furnish the U.S. Marshal with the required
2 Form USM-285.¹ Within twenty days after receiving from the U.S. Marshal a copy of
3 the Form USM-285, showing whether service has been accomplished, Plaintiff must
4 file a notice with the court identifying whether defendant was served. If Plaintiff
5 wishes to have service again attempted on an unserved defendant, a motion must be
6 filed with the Court identifying the unserved defendant and specifying a more detailed
7 name and/or address for said defendant, or whether some other manner of service
8 should be attempted.
- 9 5. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must be
10 accomplished within 90 days from the date this order is entered.
- 11 6. From this point forward, Plaintiff shall serve upon Defendants, or, if appearance has
12 been entered by counsel, upon the attorney(s), a copy of every pleading, motion, or
13 other document submitted for consideration by the court. Plaintiff shall include with
14 the original papers submitted for filing a certificate stating the date that a true and
15 correct copy of the document was mailed to Defendants or counsel for Defendants. The
16 Court may disregard any paper received by a District Judge or Magistrate Judge that
17 has not been filed with the Clerk, and any paper received by a District Judge, Magistrate
18 Judge, or the Clerk that fails to include a certificate of service.

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20 Dated: December 16, 2020

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22 DANIEL J. ALBREGTS
23 UNITED STATES MAGISTRATE JUDGE
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1 The USM-285 form is available at www.usmarshals.gov/process/usm285.pdf.